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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GONZALO J. IBANEZ,

Defendant and Appellant.

E068427, E068486, E068488,
E068489

(Super.Ct.Nos. 16CR018708,
FVI500145, FSB1404710,
FSB1502531)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steve Malone,
Judge. Affirmed.

Ellen M. Matsumoto, under appointment by the Court of Appeal, for Defendant
and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, and Eric A. Swenson and Heather
M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

A jury found defendant and appellant, Gonzalo Jose Ibanez, guilty as charged of attempted murder (Pen. Code, §§ 664, 187, subd. (a);¹ count 1), shooting at an occupied vehicle (§ 246; count 2), and shooting at an occupied building (§ 246; count 3).

Defendant was tried as an aider and abettor to the crimes, based on evidence he was driving a van from which a passenger fired shots at an occupied vehicle and a liquor store.

In each count, the jury found gang enhancement allegations true (§ 186.22, subd. (b)(1)(C), (b)(4)(B)) and that a principal personally and intentionally discharged a firearm (§ 12022.53, subds. (c), (e)(1)), but the jury found not true an allegation that the attempted murder was premeditated and deliberated (§ 664, subd. (a)). Defendant was sentenced to an aggregate term of 30 years to life in state prison for his current offenses and enhancements. In this appeal, he claims only that insufficient evidence supports the gang enhancements, and the matter must therefore be remanded for resentencing. We disagree and affirm the judgment. We also affirm the judgments in the three consolidated cases.²

¹ Undesignated statutory references are to the Penal Code unless otherwise indicated.

² Based on his convictions in the current case, the court found defendant violated his probation in three other cases (the consolidated cases), revoked his probation, and sentenced him to six years four months in state prison in the consolidated cases—consecutive to his 30-year-to-life state prison sentence in the current case. In case Nos. E068486, E068488, and E068489, defendant appeals the judgments in the consolidated cases, claiming he must be resentenced in the consolidated cases and in the current case in the event this court reverses the gang enhancements in the current case. Because we

II. FACTS AND PROCEDURE

A. *Prosecution Evidence*

1. The Shooting

Around 9:00 p.m. on November 29, 2015, Mark A. was driving his Toyota Camry, with two passengers, on Highland Avenue in the City of San Bernardino. While stopped at an intersection, Mark A. saw a Green Nissan Quest van through his rearview mirror, traveling fast. The van hit the rear right side area of Mark A.'s car and did not stop. Mark A. pursued the van in order to get its license plate number.

The van turned into a parking lot, where Mark A. and the van circled each other three times and Mark A. was able to see the van's male driver and male passenger. Defendant was the driver,³ but the passenger was never identified. Mark A. thought the passenger had a gun because it appeared the passenger was holding or hiding something behind the passenger door. The van left the parking lot, and Mark A. continued to follow it. During the pursuit, Mark A. took a picture of the van's license plate.

The van began to slow as it approached a traffic signal near a liquor store. Next, the lights of the van went dark, and the van went into the center divider of the street and stopped. Mark A. was right behind the van and began to fear for his life. Mark A. began to take a video of the van, then made a U-turn, and sped away in the opposite direction.

conclude substantial evidence supports the gang enhancements in the current case, we affirm the judgments of conviction and sentencing in the current and consolidated cases.

³ At trial, Mark A. identified defendant as the driver, and on the night of the shooting, Mark A. identified defendant from a six-pack photographic array as the driver.

Three to four seconds after Mark A. began making the U-turn, several shots were fired. Mark A. heard nine semiautomatic rounds which he believed were fired from the van's passenger side. Mark A. knew the shots were fired in his direction, but his car was not hit. Around 10 minutes passed from the time the van struck Mark A.'s car until the shots were fired.

S.H., an employee of the liquor store, was working behind the counter with two other employees. A customer had just left the store when a bullet broke through its front glass window and pierced the glass door of a beer cooler at the back of the store. A bullet went by S.H.'s forehead and he sustained a minor facial injury, either from the bullet or from flying shards of glass.

The video Mark A. took of the van showed it turned left into a trailer park after the shots were fired. That night, officers found the van in a parking area at the "very back" of the trailer park. Inside the van, officers found probation department paperwork with defendant's name and date of birth written on it. Officers also found a bindle of methamphetamine in the van, with a net weight of 18.89 grams, and a can of black spray paint. No shell casings were found in or near the van or in the street where the shots were fired, but a revolver could have been used in the shooting and revolvers do not eject shell casings. The van had not been reported stolen, but there were no "ties" between its registered owner and defendant.

2. Gang Evidence

San Bernardino County Deputy Sheriff Michael Madril testified as a gang expert for the prosecution. The Inglewood Trece is a criminal street gang with around 400 members, which began on the Westside of Los Angeles in the 1970's and later moved into other areas. The gang's symbols are "ING 13," "X," "13," "Inglewood," and "L.A." The gang associates with the Mexican Mafia and its primary purpose is to sell drugs, commit assaults, thefts, murders, and other crimes. Defendant had two Inglewood Trece tattoos: a big "LA" that took up his entire back and another "LA" on his right leg. His gang moniker was "Malo."

Gangs claim territory by tagging. Around one month before the shooting, there was an increase in Inglewood Trece tagging in the City of Highland, including in the area where the shooting occurred. The tagging showed there was a turf war between Inglewood Trece and West Side Verdugo, another Mexican Mafia-affiliated gang. On a wall around one-half mile from the shooting, the two gangs had spray painted over each other's taggings in order to claim the area as their own. When gangs are in a turf war, they go into each other's territories and commit violent crimes, such as shooting at cars or liquor stores, in order to establish themselves in the territory, instill fear in the public, and thus intimidate the public from reporting the gang's crimes.

On the night of the shooting, Deputy Madril searched the areas where the shooting occurred and the van was found. Both areas were within the boundaries of the Inglewood Trece gang's turf. On a wall near the trailer park where the van was found, and less than

50 yards from the shooting, Deputy Madril found “fresh tagging” of “ING 13” along with defendant’s gang moniker, “Malo,” at the top of a “roll call” list of Inglewood Trece gang members. The tagging was visible from the street where the shooting occurred, and it was written in black paint, consistent with the black spray paint found in the van. A “roll call” list of gang members signifies that the members are claiming membership in the gang. The placement of defendant’s name at the top of the “roll call” list indicated he was claiming to be the leader of the Inglewood Trece.

Deputy Madril contacted defendant in June 2015. Defendant was walking on a street in Inglewood Trece territory, shirtless, with the large “LA” tattoo on his back and the “LA” tattoo on his leg. He spoke freely with Deputy Madril and another officer and provided his name. He did not claim membership in a gang, but he said he was in good standing with Inglewood Trece and his brother was a member of the gang. To establish Inglewood Trece’s pattern of gang activity, the parties stipulated that defendant was convicted of two crimes: (1) vehicle theft (Veh. Code, § 10851, subd. (a)) on March 12, 2015, with an offense date of January 20, 2015, and (2) second degree burglary (Pen. Code, § 459) of a motor vehicle on November 3, 2014, with an offense date of October 5, 2014. The parties also stipulated that Inglewood Trece member Marco Cuevas was convicted of assault with a firearm (Pen. Code, § 245, subd. (a)(2)) on January 29, 2015, with an offense date of August 2, 2014.

Deputy Madril opined that defendant was an active member of Inglewood Trece at the time of the shooting and that the shooting was committed “for the benefit of” and “in

association with” the gang, but the deputy did not opine, and the prosecution did not claim, that the shooting was “at the direction of” the gang. (§ 186.22, subd. (b).) The deputy based his opinions on all of the circumstances surrounding the shooting, including its location in Inglewood Trece gang territory, the fresh gang tagging on the wall visible from the shooting, defendant’s gang tattoos, the salable quantity of methamphetamine in the van, and the deputy’s prior contact with defendant. The deputy explained the shooting was committed for the benefit of the gang because acts of violence, including shootings, intimidate the public and dissuade persons from reporting gang crimes. The deputy also testified that gang members commonly commit crimes together. In response to a hypothetical question based on the circumstances of the shooting, the deputy opined that the driver, a gang member, and the unidentified passenger, the shooter, committed the shooting “in concert” and “in association with” and “for the benefit of” the gang.

B. Defense Evidence

Defendant did not testify, and no defense evidence was presented.

III. DISCUSSION

Defendant claims insufficient evidence supports the gang enhancements in counts 1, 2, and 3. He argues insufficient evidence shows the shooting, and therefore the crimes, were committed “for the benefit of” or “in association with” the Inglewood Trece gang, or that he aided and abetted the crimes “with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (§ 186.22, subd. (b)(1).) We disagree.

A. Standard of Review and Applicable Legal Principles

Our standard of review of the sufficiency of the evidence supporting the gang enhancements is well established. “In considering a challenge to the sufficiency of the evidence to support an enhancement, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] ‘A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.’ [Citation.]” (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

A gang enhancement has two elements or prongs. “A gang enhancement does not apply unless the crime was ‘committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members’” (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 322 (*Villalobos*); § 186.22, subd. (b)(1).) Thus, to prove a gang enhancement, the People must prove (1) the crime was committed at the direction of, for the benefit of, or in association with a criminal street gang, and (2) the defendant

committed the crime with the specific intent to promote, further, or assist in any criminal conduct by gang members. (*Villalobos, supra*, at p. 322.)

At trial, the prosecution did not claim, and Deputy Madril did not opine, that counts 1, 2, and 3 were committed “at the direction of” Inglewood Trece. (§ 186.22, subd. (b)(1).) Thus, we focus on whether substantial evidence supports Deputy Madril’s opinion, and the jury’s implied findings, that the crimes were committed “for the benefit of” or “in association with” Inglewood Trece, and whether defendant aided and abetted the crimes “with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (*Ibid.*) Defendant claims insufficient evidence supports each of these elements. As noted, we disagree.

B. *Substantial Evidence Supports the Gang Enhancements*

Before we address defendant’s arguments, we summarize why we conclude substantial evidence supports the gang enhancements. The prosecution presented solid evidence that defendant was an active member and even a leader of the Inglewood Trece criminal street gang at the time of the shooting, that the shooting occurred in Inglewood Trece territory, and defendant was driving the van from which an unidentified passenger fired several shots at Mark A.’s car and the liquor store—after the van hit Mark A.’s car and failed to stop, and Mark A. pursued the van into Inglewood Trece gang territory.

Mark A. identified defendant as the driver of the van, and probation department paperwork, with defendant’s name and birthdate written on it, were found in the van after the shooting. The van was found in a trailer park near the shooting, and “fresh”

Inglewood Trece gang tagging, which included defendant's gang moniker "Malo," was found within 50 yards of the shooting and visible from the location of the shooting. In addition, the shooting occurred in Inglewood Trece territory after the van drove into the center divider and turned off its lights. This showed the driver and the passenger, the apparent shooter, were acting "in concert" and "in association" with each other and the Inglewood Trece gang.

All of this evidence supported Deputy Madril's expert opinion testimony that the shooting (and counts 1, 2, and 3) was committed "for the benefit of" and "in association with" the Inglewood Trece criminal street gang. (§ 186.22, subd. (b)(1).) The deputy explained that violence and shootings benefit criminal street gangs by instilling fear and intimidating the public not to report gang crimes. Here, the fresh tagging of "ING 13," along with a "roll call" list of Inglewood Trece gang members, announced to the neighborhood who was responsible for this violence and whom it should fear. Thus, substantial evidence shows the shooting was committed "for the benefit of" and "in association with" the Inglewood Trece gang.

The same evidence supports a reasonable inference that defendant aided and abetted his passenger in committing the shooting "with the specific intent to promote, further, or assist in criminal conduct by gang members." (§ 186.22, subd. (b)(1).) Based on Deputy Madril's testimony that shootings by gang members intimidate the public from reporting gang crimes, the jury reasonably could have inferred that, in aiding and abetting

his passenger in committing the shooting, defendant specifically intended to further and assist in criminal conduct by his gang, the Inglewood Trece.

C. Defendant's Challenges to the Sufficiency of the Evidence Lack Merit

Defendant first claims insufficient evidence shows the shooting was committed “in association” with the Inglewood Trece gang. He posits that the jury’s not true finding on the premeditation and deliberation allegation shows the jury found “this was an impulsive shooting without forethought.” From this premise, he argues the jury must have not believed that “the shooter fired specifically to enhance Inglewood Trece’s reputation as a gang.” He argues the not true finding on the premeditation and deliberation allegation “negated the possibility that the jurors also found that [the shooting] was committed with the specific intent to benefit Inglewood Trece,” because “the absence of reflection negates the possibility that the defendant and his passenger had a specific gang purpose in mind.”

We find this argument wholly unpersuasive. It erroneously conflates the absence of premeditation and deliberation in the attempted murder with the absence of a “specific intent to promote, further, or assist in any criminal conduct by gang members.”

(§ 186.22, subd. (b)(1).) The two are not the same. As the jury was instructed, premeditation in the context of attempted murder requires the perpetrator to have reached the decision to kill before he or she completed the act of the attempted murder.

(CALCRIM No. 601.) And deliberation in the context of attempted murder requires the perpetrator to have “carefully weighed” the considerations for and against the decision to

kill and, knowing the consequences, the perpetrator decided to kill. (*Ibid.*) But the “specific intent to promote, further, or assist in any criminal conduct by gang members,” requires neither premeditation nor deliberation. (See § 186.22, subd. (b)(1).) Nor was the jury erroneously instructed otherwise. Simply put, the jury’s not true finding on the premeditation and deliberation allegation is consistent with, and does not “negate,” its implied findings that defendant aided and abetted the shooting “with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (*Ibid.*)

Defendant also argues the not true finding on the premeditation and deliberation allegation means the true findings on the gang enhancement allegations *could not have been* based on an implied finding that the shooting was committed “for the benefit of” the Inglewood Trece gang. Instead, he argues, these true findings *must have been based on* the jury’s implied finding that the shooting was committed “in association with” Inglewood Trece. (§ 186.22, subd. (b)(1).) And, he argues, insufficient evidence shows the crimes were committed “in association with” Inglewood Trece because *no evidence* showed that defendant’s passenger, the apparent shooter and perpetrator of the crimes, was a gang member or a member of Inglewood Trece.

Assuming defendant’s passenger was not a gang member, the People correctly point out, a “lone actor” may commit a crime “for the benefit of” a gang and with the specific intent to promote any criminal conduct by gang members. (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1138-1139.) Thus, a gang enhancement may apply to a crime that is aided and abetted by a gang member but perpetrated by a nongang member—as

long as the crime is committed for the benefit of, in association with, or at the direction of a gang, and with the “specific intent to promote, further, or assist in any criminal conduct by gang members.” (§ 186.22, subd. (b)(1).) The statute does not require that all principals in the commission of the underlying crime, including the perpetrator, be gang members. As discussed, substantial evidence shows defendant aided and abetted his passenger, the apparent shooter and perpetrator, in committing the shooting “for the benefit of” the Inglewood Trece gang and “with the specific intent to promote, further, or assist in any criminal conduct by gang members,” regardless of whether the passenger was a gang member or the crimes were committed “in association with” Inglewood Trece. (§ 186.22, subd. (b)(1).)

Defendant claims this court’s decision in *Villalobos* “instructs that what is required [for a gang enhancement to apply] is a showing” that the crime was committed “in concert” or in association “with known gang members.” Defendant misreads *Villalobos*. There, a nongang member committed crimes in concert with known gang members. The defendant, Osika, who was not a gang member, aided and abetted her codefendant and boyfriend, Villalobos, an admitted and active gang member, in committing a home (hotel room) invasion robbery. (*Villalobos, supra*, 145 Cal.App.4th at pp. 313-315, 322.) The defendants were convicted of several crimes and gang enhancements were found true against each of them. (*Id.* at pp. 313-314.)

On appeal in *Villalobos*, this court concluded substantial evidence supported the specific intent element of the gang enhancements against Osika because the evidence

showed she was aware of her boyfriend Villalobos's gang affiliation and committed the crimes in concert with him with the specific intent of assisting in criminal conduct by him, a gang member. (*Villalobos, supra*, 145 Cal.App.4th at p. at p. 322.) More broadly, this court reasoned that the "[c]ommission of a crime in concert with known gang members is substantial evidence which supports the inference that the defendant acted with the specific intent to promote, further or assist gang members in the commission of the crime. [Citation.]" (*Ibid.*) Defendant misinterprets this statement to mean that the commission of a crime in concert with a known gang member is *necessary* to prove the specific intent element of a gang enhancement, that is, to show the defendant acted "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1).) *Villalobos* stands for no such proposition.

In supplemental briefing, defendant argues insufficient evidence shows the crimes were committed "for the benefit of" the Inglewood Trece gang. He principally relies on *People v. Perez* (2017) 18 Cal.App.5th 598, where the court struck gang enhancements based on insufficient evidence. (*Id.* at pp. 606-614.) *Perez* is distinguishable on its facts. The defendant in *Perez* was a gang member who shot four persons at a college party (*id.* at pp. 602-603), but there was no evidence that the shooting was "for the benefit of" the defendant's gang (*id.* at pp. 606-609). The shooting did not occur in gang territory, there was no evidence that other gang members were present at the party, that anyone at the party knew the defendant was a gang member, or that the shooting was in retaliation for prior gang activity. (*Id.* at p. 609.) The only evidence supporting the gang enhancements

was the gang expert's unsupported testimony that a shooting by a gang member would "instill fear in anybody who knows about that shooting," and this fear would enhance the reputation of the shooter and the shooter's gang. (*Id.* at p. 610.)

The *Perez* court concluded that the gang expert's testimony was insufficient to support the gang enhancements because, in the expert's view, "essentially any shooting by a gang member is gang related because the use of violence enhances the gang member's reputation, and thereby inures to the gang's benefit by instilling fear in the community." (*People v. Perez, supra*, 18 Cal.App.5th at p. 610.) The *Perez* court noted that other courts had "soundly rejected such a sweeping generalization untethered, as it is, to specific evidence of both prongs of the gang enhancement." (*Ibid.*)

Defendant claims Deputy Madril's expert opinion that the shooting was committed "for the benefit of" the Inglewood Trece gang is likewise factually unsupported. He asserts that the deputy's opinion "did not draw upon any facts that would lead to a reasonable inference that [defendant] specifically intended to benefit his gang" by aiding and abetting the shooting. We disagree. The deputy's opinion that the shooting was committed for the benefit of defendant's gang was based on all of the circumstances surrounding the shooting, including that it occurred in Inglewood Trece territory—after Mark A. chased the van into the gang's territory—and the fresh gang tagging found on the wall after the shooting—visible from the location of the shooting. Thus, ample evidence supports the deputy's conclusion that the shooting was committed for the

benefit of the gang. As the deputy explained, acts of violence, including shootings in gang territory, intimidate the public and dissuade persons from reporting gang crimes.

Lastly, defendant argues “[t]he fact that [he] was in his gang territory when the shots were fired” is insufficient to support Deputy’s Madril’s opinion that he aided and abetted the shooting for the benefit of his gang. He relies on *People v. Ramon* (2009) 175 Cal.App.4th 843, where insufficient evidence supported the gang expert’s opinion that two gang members, who were stopped in their gang’s territory while driving a recently stolen vehicle and in possession of an unregistered firearm, committed the crimes for the benefit of their gang and with the specific intent to further criminal conduct by their gang, because the gang members *could* use the vehicle and unregistered firearm to commit numerous crimes. (*Id.* at pp. 847-848.) The *Ramon* court reasoned that the mere “possibility” the defendant and his cohort possessed the stolen vehicle and firearm with the specific intent to benefit their gang, or further criminal conduct by their fellow gang members, was insufficient to support the gang enhancements. (*Id.* at p. 853.) But here, the fact that the shooting was in Inglewood Trece gang territory, and that defendant was an Inglewood Trece gang member, was not the only evidence supporting Deputy Madril’s opinion that the shooting was committed for the benefit of the Inglewood Trece gang. Ample additional evidence, including the fresh gang tagging found after the shooting and visible from the location of the shooting, showed the shooting was committed in association with and for the benefit of the Inglewood Trece gang.

In the dissent's view, insufficient evidence supports the gang enhancements in part because there was no evidence that the Inglewood Trece tagging found on the wall, 50 yards from the shooting and visible from where the shooting occurred, was placed on the wall after the shooting in order to take credit for it. (Conc. & dis. opn. *post*, at p. 3.) The record does not support the dissent's conclusion that "[t]he graffiti was there before the shooting." (*Ibid.*) Rather, the evidence is insufficient to show whether the tagging was placed on the wall before the shooting or very shortly after the shooting. At oral argument, the People conceded the evidence was inconclusive on this point. In any event, our conclusion that substantial evidence supports the gang enhancements in no way depends on the tagging having been placed on the wall *after* the shooting, and our opinion nowhere states or assume that the tagging was placed on the wall after the shooting. If the tagging was on the wall before the shooting, the jury reasonably could have inferred that defendant waited to aid and abet his passenger in committing the shooting until it could be committed in view of the tagging.

The dissent's broader point is that insufficient evidence supports the gang enhancements because neither Mark A. nor any other "potential witness" to the shooting had any reason to believe, *at the time of the shooting*, that defendant or his passenger were members of the Inglewood Trece or any other gang. (Conc. & dis., opn. *post*, at p. 1.) Thus, the dissent reasons that the shooting could not possibly have benefited the Inglewood Trece by instilling fear of the gang in the neighborhood and enhancing the gang's reputation for violence. (*Id.* at pp. 3-4.) Respectfully, the dissent's view

disregards the evidence as a whole and the inferences the jury reasonably could have drawn from the evidence.

Ample evidence showed defendant was a leading member of the Inglewood Trece at the time of the shooting, even if that was not apparent to Mark A. or to any other potential witness to the shooting. The record also shows defendant had ample time to aid and abet his passenger in shooting at Mark A.'s car *before* defendant drove into Inglewood Trece territory, but he did not do so. Instead, the jury reasonably could have inferred that defendant intentionally *waited* to aid and abet the shooting until it could be committed in his gang's territory, and that the shots defendant's passenger fired at Mark A.'s car and at the liquor store were *intended*, both by defendant and his passenger, to instill fear of Inglewood Trece in its territory and thus benefit the gang. It is also significant that there was an ongoing turf war between Inglewood Trece and a rival gang, West Side Verdugo, in the area where the shooting occurred.

All of this evidence supports a reasonable inference that defendant aided and abetted his passenger in shooting at Mark A.'s car and at the liquor store "for the benefit of" and "in association with" the Inglewood Trece and "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b).) In the dissent's view, the shooting *did not benefit* the Inglewood Trece, or any gang, because no witness to the shooting knew, at the time of the shooting, that it was perpetrated or aided and abetted by any gang members. But the gang enhancement statute does not require the prosecution to show that the crime actually or necessarily

benefited a gang; it only requires the prosecution to show the defendant perpetrated or aided and abetted the crime “*for the benefit of*” a gang and “with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (*Ibid.*, italics added.) This standard was met here.

Thus, we do not hold that “whenever a gang member commits a violent crime in his gang’s territory and within sight of his own gang graffiti, those facts in and themselves are sufficient to show that the crime was committed for the benefit of, at the direction of, or in association with the gang and with the specific intent to promote, further, or assist in criminal conduct by gang members.” (Conc. & dis. opn. *post*, at p. 4.) Rather, we hold that, based on the entire record and the circumstances of the shooting, the jury reasonably could have inferred that defendant intentionally aided and abetted his passenger in committing the shooting at Mark A.’s car and at the liquor store, “for the benefit of” and “in association with” the Inglewood Trece, and “with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (§ 186.22, subd. (b).)

IV. DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS

J.

I concur:

RAMIREZ

P. J.

[*People v. Ibanez*, E068427]

MENETREZ, J., Concurring and Dissenting.

When shots were fired from a van driven by Inglewood Trece gang member Gonzalo Jose Ibanez, neither the victim nor any potential witness had any reason to believe that either the driver or the shooter was a member of Inglewood Trece or any other gang. No gang names were called out, no gang signs were displayed, no gang tattoos were visible, and the target was not a rival gang member. Neither Ibanez nor Inglewood Trece subsequently took credit for the shooting. Even though the public thus had no basis to attribute the shooting to Inglewood Trece (as opposed to another gang or no gang at all), the prosecution's gang expert testified that the shooting benefited Inglewood Trece *by causing the public to fear Inglewood Trece*. The majority concludes that the gang enhancement is supported by substantial evidence. I disagree and therefore respectfully dissent.

“Expert opinion that particular criminal conduct benefited a gang by enhancing its reputation for viciousness can be sufficient to raise the inference that the conduct was ‘committed for the benefit of . . . a[] criminal street gang.’” (*People v. Albillar* (2010) 51 Cal.4th 47, 63.) At the same time, however, “[n]ot every crime committed by gang members is related to a gang.” (*Id.* at p. 60.) Nor is every violent crime committed by a gang member in gang territory related to a gang. (*People v. Ramirez* (2016) 244 Cal.App.4th 800, 805, 818-820 [gang enhancement was not supported by substantial evidence even though attempted murder and assault were committed by gang members or

affiliates and in gang territory].) In particular, if no one witnessing the crime has any way of knowing that the perpetrators are members of a specific gang or any gang at all, then it is impossible for the crime to enhance the perpetrators' gang's reputation. (*In re Daniel C.* (2011) 195 Cal.App.4th 1350, 1363 ["[n]o gang signs or words were used, and there was no evidence that [the victim] or any of the other persons who witnessed the crime knew that gang members or affiliates were involved," so "the crime could not have enhanced respect for the gang members or intimidated others in their community"]; *People v. Perez* (2017) 18 Cal.App.5th 598, 612.)

Here, the shooting could not have enhanced the reputation of Inglewood Trece because, until Ibanez was apprehended and charged, members of the public had no reason to believe that the crime was committed by a member of Inglewood Trece.

The only evidence connecting the crime to Inglewood Trece showed the following facts: (1) Ibanez is a member of Inglewood Trece; (2) the crime was committed in Inglewood Trece territory; (3) the crime was committed within 50 yards of, and within sight of, Inglewood Trece graffiti that displayed Ibanez's gang moniker ("Malo") in black paint; and (4) police found a can of black spray paint in the van from which the shots were fired. The jury could reasonably infer from those facts that Ibanez had painted the nearby graffiti, but there is no evidence that he painted it *after* the shooting. The shooting occurred just after 9:00 p.m., police located the van just after 10:00 p.m., and the prosecution introduced a video showing the van being driven directly from the scene of the shooting to the location where the police found the van abandoned, with the paint can

inside. The prosecution's gang expert testified that the graffiti was "fresh" but explained that he meant only that it was relatively recent—the wall in question is often covered with graffiti and then repainted, and at the time of the shooting "there was very little tagging on the wall." There is, in sum, no evidence that Ibanez (or anyone else) painted the graffiti after the shooting in order to take credit for it. The People have never argued to the contrary.

The majority nonetheless concludes that the graffiti "announced to the neighborhood who was responsible for this violence and whom it should fear." (Maj. opn., *ante*, at p. 10.) The record contains no support for that statement. The graffiti was there before the shooting. The graffiti consequently did not announce who was responsible for the shooting any more than it announced who was responsible for any other crime that might later take place in the vicinity. Moreover, the prosecution's gang expert testified that there was an ongoing turf war between Inglewood Trece and West Side Verdugo in the neighborhood where the shooting occurred, and the expert explained that gangs engaged in a turf war commit violent crimes in the contested territory to "intimidate the local people in the neighborhood to gain control of the area." The People's own evidence thus tended to show that a violent crime committed in this neighborhood could just as easily be attributed to West Side Verdugo as to Inglewood Trece.

Again, the record contains no evidence that members of the public had any way of knowing that the shooting was committed by a member of Inglewood Trece, West Side

Verdugo, some other gang, or no gang. It was consequently impossible for the crime to enhance Inglewood Trece's reputation. (*In re Daniel C.*, *supra*, 195 Cal.App.4th at p. 1363; *People v. Perez*, *supra*, 18 Cal.App.5th at p. 612.)

The majority further contends that even if the crime did not “actually or necessarily” benefit Inglewood Trece, the record contains substantial evidence that the crime was nonetheless for the benefit of Inglewood Trece. (Maj. opn., *ante*, at pp. 18-19.) But the prosecution's only theory of how the crime was for the benefit of Inglewood Trece was that it would enhance Inglewood Trece's reputation, and the only evidence supporting that theory was the gang expert's testimony to that effect—“the shooting was committed for the benefit of the gang because acts of violence, including shootings, intimidate the public and dissuade persons from reporting gang crimes.” (Maj. opn., *ante*, at p. 7.) The problem remains that it was impossible for the crime to enhance Inglewood Trece's reputation because members of the public had no reason to believe the crime was committed by a member of Inglewood Trece, as opposed to some other gang or no gang. The record therefore does not contain substantial evidence that the crime was committed for the benefit of Inglewood Trece.

In effect, the majority holds that whenever a gang member commits a violent crime in his gang's territory and within sight of his own gang graffiti, those facts in themselves are sufficient to show that the crime was committed for the benefit of, at the direction of, or in association with the gang and with the specific intent to promote, further, or assist in criminal conduct by gang members. That cannot be correct. I

therefore respectfully dissent from the affirmance of the true finding on the gang enhancement. I concur in the affirmance of the remainder of the judgment.

MENETREZ

J.